(7)

No. 128, Original

IN THE

Supreme Court of the United States

STATE OF ALASKA,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

On Motion for Leave to Intervene

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OPPOSITION OF PLAINTIFF STATE OF ALASKA TO MOTION FOR LEAVE TO INTERVENE AND FILE ANSWER

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No. 128, Original

STATE OF ALASKA,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

OPPOSITION OF PLAINTIFF STATE OF ALASKA TO MOTION FOR LEAVE TO INTERVENE AND FILE ANSWER

INTRODUCTION

Plaintiff State of Alaska opposes the motion for leave to intervene filed by Franklin H. James, *et al.* ("Movants"). This case, brought under the Court's original jurisdiction, is a quiet title action between two sovereigns—the State of Alaska and the United States—over the submerged lands underlying the marine areas in Southeast Alaska. No other person or entity claims an interest in title to these lands, and title is the only issue that will be adjudicated. Movants admit that they only wish to participate on the title question and do not seek to expand the issues in the case.[1] Movants' Brief in

[1] Movants are only interested in the question whether the United States defeated Alaska's title to the submerged lands underlying the marine waters within the boundaries of the Tongass National Forest. *See* Proposed Answer of Intervention at 4.

Support of Motion for Leave to Intervene and File Answer ("Brief in Support") at 7.

Movants, however, do not claim an ownership interest in these lands. Instead, by their own admission, they seek intervention solely to pursue their commercial interest in harvesting and selling herring roe on kelp from the waters of Southeast Alaska. *Id.* at 2. Movants assert an interest in the subject matter of this litigation merely because they have subsistence rights on federal public lands under the Alaska National Interest Lands Conservation Act ("ANILCA"), Pub. L. No. 96-487, 94 Stat. 2371 (1980) (codified primarily at 16 U.S.C. §§ 3001-3233). Brief in Support at 5-6. Movants anticipate that, if the United States owns the lands underlying the marine areas in Southeast Alaska, they will be permitted to harvest herring roe on kelp for sale under ANILCA. *Id.* at 2.

Movants' only interest in the subject of this litigation is thus wholly derivative of the United States' position that it defeated Alaska's title to the submerged lands. It is based solely on the operation of a federal statute of general application relating to the management of federal public lands.

Although Movants stress that they are Alaska Natives, *id.* at 1, their asserted interest is independent of their status as Alaska Natives because ANILCA's subsistence provisions encompass all "rural Alaska residents." *See* 16 U.S.C. § 3113 (defining "subsistence uses" for purposes of ANILCA). Moreover, although Movants liken themselves to Indian tribes, Brief in Support at 5-6, they do not claim that they constitute a tribe or other governmental organization, and neither the United States nor Alaska has recognized them as tribes.[2]

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[2] Movants suggest that they represent or constitute "communities" under ANILCA. Even if true, any "community" interest is indistinguishable from the individual Movants' interests.

Movants' interest thus has no bearing on the question of title, the sole issue to be resolved between the sovereign parties. As shown below, their interest is insufficient to warrant intervention under the stringent standard applicable to this original action.

ARGUMENT

Movants present no interest in their own right that is not properly represented by the sovereigns already parties. Consequently, Movants fail to meet the high standard this Court has established for intervention by third parties in original actions, a standard that guards against expanding an original action to the dimensions of a class action. But even if intervention were guided by the looser standards under the Federal Rules of Civil Procedure, both intervention as of right and permissive intervention should be denied. Under those rules, Movants have no entitlement to intervention as of right because they have only a derivative interest in the subject matter of this case and not a direct interest, and what interest they have is more than adequately represented by the United States. And permissive intervention should be denied because Movants can contribute most effectively and most expeditiously by participating as *amici curiae*.

I. MOVANTS HAVE NOT SATISFIED THE STRINGENT CRITERIA FOR INTERVENTION IN ORIGINAL ACTIONS.

A. As a General Rule, Parties May Not Intervene in Original Actions Involving Their Governments.

Movants' briefing in support of their motion to intervene improperly addresses only Rule 24 of the Federal Rules of Civil Procedure and the interpretation thereof. Supreme Court Rule 17.2 provides in part that the Federal Rules of Civil Procedure "may be taken as guides" in cases brought under the Court's original jurisdiction, but the Court has made clear that "the federal rules are a guide to the conduct

of original actions in this Court only 'where their application is appropriate.'" *Utah* v. *United States*, 394 U.S. 89, 95 (1969) (citation omitted). Where, as here, parties seek to intervene in original actions, the Court has held that application of the federal rules is *not* appropriate. Rather, in these circumstances the Court has established a general rule that reflects the special considerations governing the exercise of the Court's original jurisdiction, and that eclipses the application of Rule 24. *See United States* v. *Nevada*, 412 U.S. 534, 538 (1973) (acknowledging that in district court, movants would be permitted to intervene under Federal Rules, but that intervention in original action would be denied under general rule applicable to cases under the Court's original jurisdiction); *see also Nebraska* v. *Wyoming*, 515 U.S. 1, 28 (1995) (Thomas, J., dissenting).

The general rule is stated succinctly in *Nebraska* v. *Wyoming*, 515 U.S. at 21, as follows:

> Ordinarily, in a suit by one State against another subject to the original jurisdiction of this Court, each State "must be deemed to represent all its citizens." *Kentucky* v. *Indiana*, 281 U.S. 163, 173 (1930). A State is presumed to speak in the best interests of those citizens, and requests to intervene by individual contractees may be treated under the general rule that an individual's motion for leave to intervene in this Court will be denied absent a "showing [of] some compelling interest in his own right, apart from his interest in a class with all other citizens and creatures of the state, which interest is not properly represented by the state." *New Jersey* v. *New York*, 345 U.S. 369, 373 (1953); cf. Fed. Rule Civ. Proc. 24(a)(2).

The rule is not limited to original actions between States, but also applies to original actions between the United States and an individual State or States. *See United States* v. *Nevada*, 412 U.S. at 538.

The general rule is built not only on respect for the interest of the sovereign parties to the original action, but also the Court's interest in ensuring that its original jurisdiction is exercised sparingly. *Utah*, 394 U.S. at 95; *see also New Jersey*, 345 U.S. at 372-373; *Kentucky*, 281 U.S. at 173. In *New Jersey* v. *New York*, 345 U.S. at 372-373, the Court explained that the rule

> is a recognition of the principle that the state, when party to a suit involving a matter of sovereign interest, "must be deemed to represent all its citizens." *Kentucky* v. *Indiana*, 281 U.S. 163, 173-174 (1930). The principle is a necessary recognition of sovereign dignity, as well as a working rule for good judicial administration. Otherwise, a state might be judicially impeached on matters of policy by its own subjects, and there would be no practical limitation on the number of citizens, as such, who would be entitled to be made parties.

Concluding that the Court's "original jurisdiction should not thus be expanded to the dimensions of ordinary class actions," the Court advanced a rule that strongly favors representation by the sovereign of all citizens' general interests in original actions. *Id.* at 373.

Nor is the rule limited to situations where parties seek to support the positions of their States. To the contrary, in *Kentucky* v. *Indiana*, the Court held that citizens of Indiana could not appear in an original action to challenge the validity of a contract between Kentucky and Indiana, even though Indiana did not contest the issue. As the Court held:

> Citizens, voters, taxpayers, merely as such, of either State, without a showing of any further and proper interest, have no separate individual right to contest in such suit the position taken by the State itself. Otherwise, all the citizens of both States, as one citizen, voter, and taxpayer has as much right as another in this respect, would be entitled to be heard. [281 U.S. at 173.]

B. Movants' Asserted Interests Do Not Justify Intervention Under the Criteria Applicable to Original Actions.

As noted, to be entitled to intervene in this original action, Movants must demonstrate (1) that they have a compelling interest that is held in their own right, distinct from an interest held in common with other citizens and creatures of the state; and (2) that the interest is not already properly represented. *New Jersey*, 345 U.S. at 373. As shown below, Movants have failed to satisfy either of these stringent criteria. Indeed, permitting Movants to intervene would raise the specter of a parade, without limit, of other parties seeking to intervene to litigate the merits of a title dispute which, properly viewed, lies solely between the sovereigns.

1. The only interest Movants assert is based on the subsistence preference ANILCA presently affords rural residents for the taking of fish and wildlife on federal lands. *See* 16 U.S.C. § 3114. Movants have no claim in their own right to title of the submerged lands; instead, they simply claim an interest in exercising their rights under ANILCA in the marine waters of the Tongass National Forest if title to the submerged lands underlying these waters is quieted in the United States.

This interest does not stand apart from the interest of other citizens or creatures of the state. The interest in the subject matter of the litigation asserted by Movants is shared with all rural residents. *See* 16 U.S.C. § 3113.[3] The interest is derived from a federal statute of general application that affects not only all rural residents of Alaska, but also all non-rural residents of Alaska and even residents of other States

[3] The fact that Movants filed a lawsuit that is pending in federal district court in Alaska relating to these subsistence rights does not set Movants' subsistence rights apart from or above the interest held by any other rural residents.

whose use of fish and wildlife may be curtailed in order to provide a priority for rural subsistence users on federal lands. *See* 16 U.S.C. §§ 3112, 3125. Any of these individuals or classes of users has the same "interest" in title as Movants.

Moreover, all Alaska residents have a right under Article VIII, Section 3 of the Alaska Constitution to "common use" of resources on State-owned lands and waters. Under Movants' theory, any or all of these people would have a right to intervene in *support* of the State's title claim. The same is true for all commercial fishermen, whether or not Alaska residents. Even tourists or cruise ship operators interested in visiting the waters of Southeast Alaska might be permitted to intervene to support or oppose one side or the other under Movants' theory.

Movants' motion therefore presents just the situation warned against in *New Jersey*. In that case—a suit to enjoin the diversion of river water—the Court denied intervention to one downstream user of the water, the City of Philadelphia, because the City was just one of many such users, and allowing it to intervene would thus open the floodgates to intervention by all other users of the river. 345 U.S. at 373. The same is true here. Movants are just some of the many people and entities who use the vast waters of Southeast Alaska. Were Movants held to have an adequate interest in their own right based on no more than a derivative interest in title being quieted in the United States or Alaska, "there would be no practical limitation on the number of citizens, as such, who would be entitled to be made parties." *Id.* As in *New Jersey*, this case should not be expanded to the dimensions of a class action, *id.*, in which the added members of the "class" have neither an interest in title in their own right to assert, nor any interest that bears on the merits of either sovereign party's claim of title.[4]

[4] The United States claims title to the submerged lands that are the subject of this action on its own behalf and on behalf of all its

Accordingly, under the *New Jersey* rule leave to intervene should be denied, and the sovereign parties left to resolve their competing claims to title, on behalf of themselves and their respective citizens, whose myriad interests these sovereigns are properly deemed to represent before the Court.

2. Under the special rule applicable to original actions, the Court need not examine whether Movants' interests are sufficiently represented, because Movants have no compelling interest distinct from the interests of other residents of Alaska. But even if the Court were to conclude otherwise, Movants have not demonstrated that the United States does not properly represent their interest in this action. To the contrary, the United States is actively defending its asserted title to the submerged lands underlying the marine waters in Southeast Alaska, which is precisely the same position Movants seek to vindicate. *See, e.g.*, United States' Answer to Amended Complaint.

In *New Jersey*, the Court denied the City of Philadelphia's motion to intervene in an action involving the Commonwealth of Pennsylvania because the City was "unable to point out a single concrete consideration in respect to which the Commonwealth's position does not represent Philadelphia's interest." 345 U.S. at 374. Likewise here, Movants seek to litigate precisely the same position taken by the United States, one of the sovereign parties to this action. Like the City of Philadelphia, Movants are "unable to point out a single concrete consideration in respect to which the [United

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citizens, under the Property Clause of the United States Constitution, art. IV, § 3, cl. 2, and certain exceptions to the Submerged Lands Act, 43 U.S.C. § 1301 *et seq*. The United States is the only party other than the State of Alaska that has a claim of title to the submerged lands in dispute. Alaska's claim, on its own behalf and that of all its citizens, is based, *inter alia*, on its sovereign constitutional right as a State to admission to the Union on an equal footing with all other States, and the Submerged Lands Act.

States] position does not represent [their] interest" in this action. Movants make no suggestion that the United States' position that it defeated Alaska's title to the submerged lands at issue is in any way at odds with Movants' position, and both seek identical relief.

Under the Court's rule, Movants cannot meet their burden by alleging that their participation is necessary to ensure that the United States will vigorously defend its own claim to title. *See* Brief in Support at 5. In *this* action, Movants' and the United States' positions are completely aligned. It is of no moment that the two are adversaries in another setting, a separate action initiated by Movants in district court. Movants ground their distrust of the United States on the United States' opposition to their motion for a preliminary injunction. *See* Ex. B to Brief in Support. Yet the mere fact that the United States pointed out that Movants had, as plaintiffs, failed to meet their heavy burden to justify a preliminary injunction does not make the United States an improper representative of its own title interest in this new action. Whatever bearing the statements of the United States in that action may have on its claim to title here, there is no doubt that the United States has clearly asserted that claim in this case and is vigorously litigating its position. Movants, who have *no* interest in that title in their own right, cannot reasonably be considered the more proper representative of this title claim. On the contrary, Movants' interest in this action "is invariably served" by the United States' position. *New Jersey*, 345 U.S. at 374. Accordingly, the motion for leave to intervene should be denied.

C. Movants' Interest Does Not Compare to Those of Other Parties Permitted to Intervene in Original Actions.

Movants rely on *Arizona* v. *California*, 460 U.S. 605 (1983), but that case only highlights the fact that they can show no comparable, direct interest apart from other citizens

or creatures of the state in the matter adjudicated. In *Arizona,* an original action to determine rights to the waters of the Colorado River, the United States had intervened to adjudicate water rights for the reservations of five Indian tribes. *Id.* at 608. Subsequently, the five tribes were permitted to intervene to assert additional tribal claims to water rights, beyond what the United States had litigated. *Id.* at 612. The five tribes each held, in their *own* right, a direct interest in the adjudication of the tribal reservations' water rights. *Id.* at 614-615. The tribes' rights were not held in common with all other citizens. And the Court found it proper that the tribes be encouraged to represent their own interest, as " 'independent and qualified members of the modern body politic.' " *Id.* at 615 (quoting *Poafpybitty* v. *Kelly Oil Co.*, 390 U.S. 365, 369 (1968)) (additional citation omitted). The *New Jersey* rule accordingly did not apply, and intervention was deemed proper under Rule 24 of the Federal Rules of Civil Procedure. *Id.*

The interest of Movants is vastly different from the interest of the tribes in *Arizona*. Movants are not tribes, and possess no tribal or other claim of title to the submerged lands at issue. Unlike in *Arizona*, every party with a direct interest in the matter to be adjudicated is already a party to this action, without intervention. Moreover, while in *Arizona* only the direct interest of five tribes was at stake, in this case an unlimited number of persons or entities share an interest in the outcome of the quiet title action in common with Movants. The five tribes were allowed to participate in *Arizona* because they asserted direct water rights not asserted by the United States and not shared by all other users of the Colorado. Movants' motion here, however, falls under the Court's general rule that the sovereigns properly represent their citizens' interests in original actions.

Movants thus do not possess the kind of direct interest that the Court has recognized may justify intervention by private parties. *See, e.g., Oklahoma* v. *Texas*, 258 U.S. 574 (1922)

(where Court held proceeds of oil and gas produced from the Red River area in receivership, private parties with claims to net proceeds were allowed to intervene). The contrast can be illustrated by reference to *Maryland* v. *Louisiana*, 451 U.S. 725 (1981). In *Maryland*, several States, joined by the United States, sued Louisiana, challenging the constitutionality of Louisiana's first use tax on certain uses of natural gas brought into that state. With little discussion, the Court permitted 17 gas pipeline owners, upon whom the tax was directly imposed, to join in the action because their companies had a direct stake in the controversy and could add to a full exposition of the issues. *Id.* at 745 n.21. The States and the United States actually had less direct interests in the matter than the pipeline owners, but found standing through their status both as purchasers of the gas at increased cost and as *parens patriae* for their respective citizens who would face increased energy costs as a result of the tax. *Id.* at 736-737; *see also id.* at 769 n.6 (Rehnquist, J., dissenting). Movants in this matter, rather than possessing a direct interest akin to that of the pipeline company owners, possess an interest akin to that of a general consumer facing increased costs, an interest properly represented by the sovereign.

Under these circumstances, the Court's general rule properly favors representation of Movants' interest in this action by the sovereign party.

II. EVEN IF THE FEDERAL RULES OF CIVIL PROCEDURE WERE APPLICABLE, INTERVENTION SHOULD BE DENIED.

As set forth above, the Court has made clear that the provisions of the Federal Rules of Civil Procedure do not apply to motions to intervene in original actions. Nevertheless, any guidance that might be provided by those rules also counsels in favor of denial of Movants' motion.

A. Movants Would Not be Entitled to Intervention as of Right.

Rule 24(a) of the Federal Rules of Civil Procedure provides in part that, upon timely application, a party may intervene as a matter of right

> when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

Movants do not meet this standard.

1. Movants Do Not Claim an "Interest" Within the Meaning of Rule 24(a).

As noted above, Movants do not claim a direct interest in the submerged lands at issue in this case. Instead, they claim only that, if the United States prevails, they will have certain rights under ANILCA to harvest and sell resources from those lands. That is not the kind of interest required for intervention as of right.

Rule 24(a) requires that the applicant assert "a significantly protectable interest." *Donaldson* v. *United States*, 400 U.S. 517, 531 (1971). While this Court has not further explained this requirement, several lower courts have concluded that intervention of right requires a "direct, substantial, legally protectable interest in the proceedings." *See, e.g., New Orleans Pub. Serv., Inc.* v. *United Gas Pipe Line Co.*, 732 F.2d 452, 463-464 (5th Cir.) (and cases cited therein), *cert. denied*, 469 U.S. 1019 (1984). As the Fifth Circuit has explained:

> What is required is that the interest be one that the *substantive* law recognizes as belonging to or being owned by the applicant. This is reflected by the requirement that the claim the applicant seeks intervention in order to assert be a claim as to which the applicant is the real party in interest. The real party in interest requirement of Rule 17(a), Fed.R.Civ.P., applies to intervenors as well as plaintiffs, as does also the rule that a party has no standing to assert a right if it is not his own. [*Id.* at 464 (citations, footnote, and internal quotes omitted).]

The interest, moreover, "must be based on a right that belongs to the proposed intervenor rather than to an existing party in the suit," and "must be so direct that the applicant would have a right to maintain a claim for the relief sought." *Keith* v. *Daley*, 764 F.2d 1265, 1268 (7th Cir.) (citations and internal quotes omitted), *cert. denied*, 474 U.S. 980 (1985). Indeed, the Seventh, Eighth, and D.C. Circuits equate this requirement to the Article III jurisdictional requirement for standing that there be a true case or controversy. *See, e.g., Solid Waste Agency of Northern Cook County* v. *United States Army Corps of Eng'rs*, 101 F.3d 503, 507 (7th Cir. 1996); *Mausolf* v. *Babbitt*, 85 F.3d 1295, 1300 (8th Cir. 1996); *City of Cleveland* v. *Nuclear Regulatory Comm'n*, 17 F.3d 1515, 1517 (D.C. Cir. 1994).[5]

Whether or not Article III standing is required, the fact remains that Movants here have no direct, legally protected interest in the subject matter of this lawsuit: title to the disputed submerged lands. Movants have no right, ability, or legal capacity to maintain a claim for a judgment quieting title in the United States. *See* 28 U.S.C. 2409a(a); *cf. Block* v. *North Dakota*, 461 U.S. 273, 286 (1983) (adverse claimants may challenge United States' title interest). Their interest is solely a derivative interest, not adverse to that of the United States. The relief they seek is precisely the same relief sought by the United States, a judgment quieting title *in the United States*, not in Movants. Because the alleged

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[5] In *Diamond* v. *Charles*, 476 U.S. 54, 69 n.21 (1986), this Court noted that lower courts had reached different conclusions on this issue, but declined to address it.

interest in title is in the United States, not Movants, intervention as of right is not available.

2. Movants Have Not Shown That the United States May Not Adequately Represent Their Interests.

Intervention as of right under Rule 24(a) is also not available if "the applicant's interest is adequately represented by existing parties." To be sure, the Court has stated that the burden of showing that representation may be inadequate for intervention under Rule 24(a) "should be treated as minimal." *Trbovich* v. *United Mine Workers*, 404 U.S. 528, 538 n.10 (1972). But *Trbovich* does not mean that the requirement of showing that representation may be inadequate has been written out of the rule entirely. *Bush* v. *Viterna*, 740 F.2d 350, 355 (5th Cir. 1984).

Because the objective of the applicants for intervention is identical to that of one of the parties as here, intervention should be denied absent "a concrete showing of circumstances * * * that make [the existing party's] representation inadequate." *City of Stilwell* v. *Ozarks Rural Elec. Coop. Corp.*, 79 F.3d 1038, 1042-43 (10th Cir. 1996) (quotation and citation omitted); *see also Northwest Forest Res. Council* v. *Glickman*, 82 F.3d 825, 838 (9th Cir. 1996). Moreover, "where the party whose representation is said to be inadequate is a governmental agency, a much stronger showing of inadequacy is required." *Hopwood* v. *Texas*, 21 F.3d 603, 605 (5th Cir. 1994). Several Circuits presume adequate representation by a governmental agency, with at least one requiring "a strong affirmative showing that the sovereign is not fairly representing the interests of the applicant." *United States* v. *Hooker Chem. & Plastics Corp.*, 749 F.2d 968, 985 (2d Cir. 1984) (and cases cited therein).

Movants have not demonstrated inadequacy of representation under the standards applied by the lower courts pursuant to Rule 24. Some courts have held that an applicant for

intervention must prove "adversity of interest, collusion, or nonfeasance." *Viterna*, 740 F.2d at 355-356; *accord Jordan* v. *Michigan Conference of Teamsters Welfare Fund*, 207 F.3d 854, 862 (6th Cir. 2000). Moreover, under this rule the required adversity of interest must be in the case before the court with respect to the issues before the court, not in some other proceeding on some other issue. *Viterna*, 740 F.2d at 356-357.

As shown above (*supra* at 9), Movants' allegations of inadequate representation fall far short under this test, because there is no indication that the United States is not vigorously litigating its claim of title in this case. *See Archer* v. *United States*, 268 F.2d 687, 690 (10th Cir. 1959) (in quiet title action between United States and Utah, motion by holder of mining claim to intervene in support of United States denied because "[t]he good faith efforts of the United States to maintain its title against Utah and those claiming under Utah assures adequate representation"). As in *Viterna*,

> [t]his is not a case in which the party with whom the applicant would be aligned has taken a position in direct opposition to the intervenor; this is not a suit in which no existing party has voiced applicant's concerns; this is not a case where the applicant has a defense not available to the present defendant; this is not a suit in which it is clear that the applicant will make a more vigorous presentation of arguments than existing parties; this is not a suit in which no party views the applicant's claims favorably. Indeed, this case is more closely aligned with those cases in which courts have determined that the burden of showing inadequacy of representation has not been met * * *. Therefore, this is not a case in which we can say that the [applicants for intervention] are "without a friend in the litigation." [740 F.2d at 357-358 (citations omitted).]

Nor have Movants shown inadequacy of representation under other standards applied by the lower courts. The Ninth Circuit asks:

> (1) [a]re the interests of the present party in the suit sufficiently similar to that of the absentee such that the legal arguments of the latter will undoubtedly be made by the former; (2) is that present party capable and willing to make such arguments; and (3) if permitted to intervene, would the intervenor add some necessary element to the proceedings which would not be covered by the parties in the suit? [*Blake* v. *Pallan*, 554 F.2d 947, 954-955 (9th Cir. 1977).]

Under this test, as well, Movants fall short. Their interests are identical to those of the United States and they would make the same arguments that the United States undoubtedly will make; they have not shown that the United States is either incapable or unwilling to make those arguments; and they have not shown that they can add anything new to the case.

B. Permissive Intervention Should be Denied Because Movants Can Contribute Most Effectively and Expeditiously as *Amici Curiae*.

In his Case Management Order No. 2 at 2, Special Master Maggs has provided for participation by *amici curiae*. In an oft-quoted passage, Judge Wyzanski observed that

> [i]t is easy enough to see what are the arguments against intervention where, as here, the intervenor merely underlines issues of law already raised by the primary parties. Additional parties always take additional time. Even if they have no witnesses of their own, they are the source of additional questions, briefs, arguments, motions and the like which tend to make the proceeding a Donnybrook Fair. Where he presents no new questions, a third party can contribute usually most effectively and always most expeditiously by a brief amicus curiae and not by intervention. [*Crosby Steam Gage & Valve Co.* v. *Manning, Maxwell & Moore, Inc.*, 51 F. Supp. 972, 973 (D. Mass. 1943).]

Alaska submits that Movants can contribute most effectively and most expeditiously by participating as *amici curiae*. Such a course would also protect the significant interests that support the Court's general rule against intervention by private parties in original actions. Accordingly, in the exercise of sound discretion, Movants' motion for permissive intervention should be denied.

CONCLUSION

For all the foregoing reasons, Movants' motion for leave to intervene should be denied.

Respectfully submitted,

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